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UNCLAS SECTION 01 OF 12 HANOI 000188

SIPDIS

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SUBJECT: 2010 TRAFFICKING IN PERSONS REPORT - VIETNAM - PART 1 of 3

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1. (U) Post provides the following responses to the questions in paragraphs 25-33 of ref A, taking into account the additional guidance and reporting requirements required by the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA of 2008). Post's responses cover the reporting period of February 2009 to February 2010. Due to system limitations, the report will be sent in three parts.

12. (SBU) Vietnam's TIP Situation

1A. Documentation and Sources of TIP Information

The Government of Vietnam's (GVN) interagency National Steering Committee (NSC-130) for the 2004-2010 National Program of Action against Trafficking in Women and Children (NPA) is headed by Deputy Prime Minister and Politburo Member Truong Vinh Trong. The Central Coordination Office of the NSC-130 is responsible for, among other things, collecting and reporting information on trafficking victims and cases. While the GVN does not have a formal mechanism for sharing TIP data, information is available upon request on a case-by-case basis; it is also shared in media reports and is often disseminated by international donor organizations supporting anti-trafficking projects. There are additional data-tracking systems at the local level in Vietnam; however, they need to be strengthened significantly to provide fully representative and credible data.

Vietnam maintains a dedicated crime statistics office under the Supreme People's Procuracy. (The Procuracy functions similar to a prosecutor's office or attorney general's office in the U.S. and handles all prosecutions.) This office tracks data on arrests, prosecutions and convictions of traffickers and other criminals. Its data and classification system differ in some respects from that of the NSC-130, but is fairly reliable. The Ministry of Labor, Invalids, and Social Affairs (MOLISA) also provides statistics on trafficking victims who receive some kind of government assistance. MOLISA's data are generally reliable, but do not include estimates on the number of victims outside the government assistance system. The GVN does not officially classify trafficking cases with labor-related criteria and therefore does not collect data on labor trafficking, although a new TIP law being drafted may change this.

The diplomatic and NGO communities in Vietnam are active in sharing TIP data and information, though much of the data are anecdotal. The UN Interagency Program on Human Trafficking (UNIAP) also shares data with the government and the NGO community. See 1.F for further information.

1B. General Overview and Changes

Vietnam remains a significant source country in a region known for trafficking in persons. To a much lesser degree, Vietnam is a

destination country for men, women, and children trafficked for the purposes of begging, sexual exploitation or forced labor. There is some anecdotal information that suggests internal trafficking does occur in Vietnam, but no reliable data exists to substantiate the scale. NSC-130 has stated that human trafficking is a complicated

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and challenging issue for Vietnam, citing poverty, high unemployment, and widespread gender inequality as factors that leave many poor Vietnamese vulnerable to trafficking. The GVN believes that its own efforts to combat trafficking, including legal reform, awareness-raising campaigns (particularly in rural communities), improved victim assistance, and enhanced regional and international cooperation, together with domestic economic development, will help reduce the incidences of trafficking in Vietnam (ref B).

Vietnam as a Source Country

The People's Republic of China remains the largest destination country for trafficked Vietnamese nationals, accounting for 60 percent of the total number of TIP cases, while Cambodia and Laos account for about 10 percent and 6.3 percent respectively. Laos is still primarily a transit country; NGO contacts, however, report that Laos is slowly becoming a destination country for Vietnamese trafficking victims (ref C).

According to Vietnam's Border Guard, the majority of TIP cases across the Chinese border involve women trafficked for prostitution or forced marriage. There are also cases of Vietnamese children being trafficked across the Chinese border for labor. Most women and children trafficked to Laos are victims of sex trafficking (ref D). Many Cambodia cases involve sexual exploitation in Cambodia or transit of Vietnamese women and teenage girls to Thailand and Malaysia, often engineered by criminal syndicates in those countries with representatives in Vietnam (ref E).

Other transit and significant destination countries for trafficked Vietnamese nationals include Malaysia, Thailand, Hong Kong, Macau, Taiwan, the Republic of Korea (ROK), and the Czech Republic. Additional destination countries include Indonesia and countries in Western Europe and the Middle East. Those trafficked to China, Cambodia, Laos, Macau, Hong Kong, Thailand, Malaysia and the Czech Republic are typically forced into prostitution, while routes to the Middle East are primarily used to traffic Vietnamese laborers. China, Taiwan, and the ROK remain the top destination countries for Vietnamese brides who end up in misrepresented or fraudulent marriages. There were media reports of pregnant women being trafficked across the Chinese border, where traffickers intend to sell the newborn children and their mothers. NSC-130 has expressed concern that these types of cases are increasing in frequency and kidnappers are becoming more aggressive (ref B).

According to the Border Guard, the provinces of Lang Son, Lao Cai and An Giang received the largest number of TIP returnees in 2009. Along the Lao border, Ha Tinh and Quang Tri received the most returnees, while An Giang, Kien Giang, Tay Ninh, and Long An were the provinces along the Cambodian border with the most TIP return cases (ref D).

Vietnam as a Destination Country

Vietnam is also a destination country for Cambodian children who are trafficked to urban centers in Vietnam, primarily for begging, but there are cases of forced labor or sexual exploitation also. Although no data on the scale of the problem is available, in 2009, Vietnam did assist with the repatriation of 900 Cambodian beggars. It was reported by the Cambodian Ministry of Social Affairs that 603 of the returnees were children under the age of 18, and that 143 children were sent home after being involved in human trafficking - 84 of those were young girls. See 5.D for further

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details.

Internal Trafficking within Vietnam

The GVN, INGOs, domestic NGOs and researchers do not have hard data to substantiate the scale of internal trafficking within Vietnam. Media reports and anecdotal information provided by NGOs, such as Blue Dragon and the IOM, suggest some cases of children from Hue and young women from rural provinces being trafficked to Ho Chi Minh City for the purposes of labor or sex work.

Significant Changes in 2009

In 2009, the GVN recognized officially, in public and private statements, for the first time, that trafficking in men, internal trafficking, and labor trafficking constitute human trafficking, and that these problems affect Vietnam. This is important since the GVN continues to promote export labor programs as essential to Vietnam's poverty reduction efforts and socio-economic development. An increased awareness and willingness to develop and implement safeguards for export laborers is key to combating potential trafficking. Deputy Prime Minister Trong also has been forthright in acknowledging publically the severe resource constraints that Vietnam faces in combating trafficking. In light of these resource constraints, the GVN has highlighted the particular contributions that INGOs have made in Vietnam's effort to combat trafficking (ref C); this is significant, since INGOs in other fields are often viewed suspiciously by conservative elements in Vietnam's Communist Party and security services. The GVN is also increasingly open to discussing trafficking in persons with the USG.

In 2009, the GVN increased protection for trafficking victims and witnesses; increased public assistance for victims in a way that protects their dignity; increased public awareness campaigns; and strengthened law enforcement cooperation, training, and prosecution by the courts. Prosecutions continued to receive increased attention and publicity. The GVN is enhancing bilateral cooperation on TIP with China and Cambodia at all levels of government, which is resulting in positive exchanges on both sides. The GVN has also increased regional cooperation within ASEAN and the United Nations framework, including the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) process in which Vietnam will assume a seat on the board for 2010.

Specific highlights include:

- In January 2009, GVN signed a Bilateral Agreement on

Anti-Trafficking with Thailand (an upgrade from the existing bilateral MOU) and held a bilateral conference in March 2009 to discuss the agreement's implementation (ref F).

- In March 2009, Deputy Prime Minister Trong convened a public meeting of the National Steering Committee to provide support for the Committee and urge it and the Ministry of Public Security (MPS) to redouble efforts to implement the NPA. In addition to GVN officials, representatives of the media, INGOs and diplomatic community were present at the workshop. The NSC-130 decided to request that the NPA be upgraded to a National Targeted Plan raising the profile of TIP issues by assigning oversight of the NSC-130 to the Office of the Government (Prime Minister's office)(ref F).

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- In May 2009, Vietnam entered final negotiations with China on a Bilateral Agreement on Anti-Human Trafficking that will upgrade the existing bilateral MOU. The GVN expects to sign the agreement in 2010. The two countries conducted a joint public awareness campaign on preventing and combating human trafficking in areas along the border between July 15 and September 15 (ref F).

- In June 2009, the National Steering Committee completed the first draft of the new comprehensive trafficking in persons law and submitted the draft to the relevant government agencies for comment (ref F).

-- In June 2009, the National Assembly voted to amend articles 119 and 120 of the Penal Code to expand the GVN's definition of trafficking to include men over the age of 16, and expand all trafficking-related laws and services to include men. This change, which will go into effect in early 2010, will bring the GVN more in line with the accepted international definition of trafficking. The National Assembly instructed the Ministry of Justice draft a more comprehensive Law on Human Trafficking. (ref B).

- In August 2009, MPS developed guidelines to protect TIP victims during investigations and prosecutions in cooperation with the International Organization for Migration (IOM). MPS organized three-day training courses in northern Vietnam in May and in June 2009 to introduce the guidelines and incorporate feedback from course participants into a revised draft sent to the GVN for approval (ref F).

-- In September 2009, Cambodia and Vietnam signed a bilateral agreement to standardize procedures for returning trafficking victims.

-- In October 2009, the GVN assessed the implementation of the NPA. The NSC-130 is currently analyzing lessons learned during the first five year implementation of the NPA (2004-2009). Once this report is complete, the Committee will draft the implementation plan covering the next five years (2010-2015) (ref C).

-- In November 2009, the Overseas Labor Management Department, under the Ministry of Labor, Invalids and Social Affairs, launched a new website (www.dolab.gov.vn) providing free information to workers who want to know more about export labor programs, including: markets recruiting foreign workers, businesses dealing in export labor and remedies if problems are encountered.

Plans for 2010

During his speech at the NPA policy review, DPM Truong Vinh Trong said the draft bill on the prevention of trafficking will be presented to the National Assembly in 2010. The National Assembly also is scheduled to consider ratification of the UN International Convention on Trafficking in Persons. The GVN is developing its next National Plan of Action to Combat Trafficking of Women and Children (2011-2020), the blueprint for the GVN's anti-TIP efforts. As part of the drafting process, the GVN will review current programs related to raising public awareness, identifying, rescuing and reintegrating victims, and the legal framework for implementing the NPA. The GVN also plans to increase bilateral and multilateral cooperation in key areas, including: public awareness campaigns, police/border guard training, and support for victims. NSC-130

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continues working on bilateral issues and agreements with China, Laos, Malaysia, and Thailand. NSC-130 has also indicated in 2010 special attention will be given to trafficking as it relates to export labor (ref B).

1C. Conditions Faced by Victims

Vietnamese trafficking victims were subjected to physical and mental abuse, sexual abuse and assault, debt bondage, indentured servitude, harsh working conditions, and imprisonment by their traffickers. Victims also described arranged marriages that turned women into domestic slaves. Some laborers abroad reported working long hours in dangerous jobs with little or no ability to dispute the conditions of their employment. Many victims of trafficking

said their traffickers kept them in isolation without mobile phones, identity documents or money. Most victims who escaped did so on their own and returned home or went to other locations without proper assessment or screening.

1D. Groups Vulnerable to TIP

Despite the public awareness and outreach efforts by the GVN and NGOs on the dangers of trafficking, a large number of Vietnamese men, women and children remain unaware and vulnerable to human trafficking. The economic incentives associated with working or marrying abroad often outweigh fears of becoming a trafficking victim. This is especially true for young women in rural areas with few opportunities for education or employment. The highest percentage of trafficking victims in Vietnam continues to be undereducated rural women between 18 and 40 years of age.

Vietnamese trafficking victims come from almost all provinces and cities in Vietnam, but most were concentrated in certain northern and southern border provinces. The following provinces reported the most cases in 2009: Ha Giang (134 cases), Lao Cai (105 cases), Lang Son (95 cases), Quang Ninh (73 cases), Ha Noi (66 cases), Nghe An (66 cases), Lai Chau (56 cases), and Bac Giang (44 cases)(ref C).

According to the Border Guard, while hard data are scarce, the Border Guard suspect the number of trafficking cases is rising, with a particular increase in the number of cases involving children kidnapped to China (ref D). (Vietnam defines child selling to be a form of trafficking.)

New trends in trafficking are also having a greater impact on men. MPS's Criminal Police Department characterized trafficking in men for labor exploitation as a new trend in Vietnam. The most frequently described scenario involved men who are offered "good jobs" overseas -- usually in China -- and then forced to do hard labor, often in dangerous jobs and/or unacceptable working conditions. One example involved several men from Hai Phong who were forced to work at a Chinese brick factory. Through cooperation with Chinese authorities, MPS was able to rescue the men and return them to Vietnam (ref H). There is no data available on male sex-related trafficking in Vietnam, but the level is believed to be low.

With export labor a strategic component of Vietnam's economic development, Vietnamese laborers are vulnerable to trafficking as the GVN struggles to strike a balance between increasing export labor and protecting its workers overseas from labor trafficking. According to official statistics, nearly 75,000 Vietnamese workers went abroad to work in 2009 on long-term labor contracts to more than 40 countries around the world, fulfilling 83 percent of the country's 2009 target. This number is down from 85,000 in 2008 due

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to a decrease in export labor demand as a result of the global economic crisis. Vietnamese laborers abroad sent back between USD \$1.6 billion and \$2 billion in annual remittances, according to MOLISA's Department of Overseas Labor (DOLAB). According to the Department of Overseas Worker management, under MOLISA, Taiwan received the most Vietnamese workers (17,776), followed by South Korea (6,451), Japan (4,740), Laos (4,580), United Arab Emirates (3,812), Macau (2,892), Cyprus (1,454) and other markets with 14,481 workers. MOLISA attempts to establish MOUs with all labor destination governments, but enforcement of these agreements is weak. The GVN has no data available regarding labor trafficking.

This year Canada, Libya and the UAE both signed new Labor MOUs that establish cooperation in labor, employment and human resource development with Vietnam. The GVN appears increasingly aware of the seriousness of exporting large numbers of workers overseas without adequate protections and enforcement mechanisms and has been discussing both publicly and privately the need to address this issue for both men and women.

Other at-risk populations have been highlighted anecdotally by NGOs, but there are insufficient data to demonstrate whether a

significant number are victims of trafficking. These include internal migrants, especially young women migrating from rural areas to urban centers, street children and foreign laborers who are crossing borders informally.

1E. Traffickers and Their Methods

Trafficking victims, their relatives and friends, and numerous press reports identified traffickers mainly as residents or former residents of the victims' provinces or communities. In some cases, the traffickers were former trafficking victims themselves. Some are cross-cultural couples (e.g., a Malaysian husband and a Vietnamese wife) while others are described as traders or businesspeople. Family members and acquaintances were often involved in trafficking cases. NGOs and GVN organizations documented many TIP cases that involved complicated, informal referral chains where a sibling, neighbor or friend referred a family member to someone else who passed the individual on to a third person or group. The practice of third-party referrals is a common feature of Vietnamese business culture, and in such cases, individuals along the chain are unlikely to know many details about the final destination of the victim and the responsible trafficker becomes more difficult to identify. There is also growing concern, among GVN officials and NGOs alike, that human trafficking in Vietnam is being increasingly handled by organized criminals. Le Hong Anh, NSC-130 Chairman, stated that trafficking in Vietnam had become greater in scale, more complicated, and diversified, with traffickers becoming more sophisticated, organized, and transnational (ref F). Additionally, the use of technology is another new trend in trafficking for Vietnam; the internet and chat rooms have been noted as new methods used by traffickers to lure victims into a trafficking situation.

Lucrative employment opportunities, marriages to wealthy foreign men, and tourism continued to be the primary solicitation methods most often used by traffickers to lure victims. The usual tactic of traffickers is to offer a so-called "easy" job as a trader, waitress or domestic helper overseas. In some cases traffickers negotiated with a parent or guardian who then gave permission for their daughters to go to work. Many victims reported strong familial pressure to contribute to the household income. Victims of labor exploitation abroad reported being lured by lucrative offers from state-licensed export labor recruitment companies as well as illegal labor recruiters, and were then sent to various destinations, including Malaysia, Thailand, and the Middle East, where they found themselves working in substandard conditions for little or no pay and no legal recourse. In addition to false advertising, victims said traffickers and employers commonly used debt bondage, confiscation of travel and identity documents, and threats of deportation to force them to keep working.

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Victims are generally transported across borders without documents. Vietnam's long land borders with China, Laos and Cambodia are extremely porous and difficult to control, and traffickers are known to frequently use forest, mountain and river routes away from legal border checkpoints. In cases involving victims trafficked to more distant destinations such as Hong Kong, Taiwan or Malaysia, MPS officials say that traffickers disguise victims as tourists or workers in a labor export program.

13. (SBU) GOVERNMENT OF VIETNAM'S (GVN) ANTI-TIP EFFORTS

1A. Acknowledgement of TIP

The GVN acknowledges that trafficking is a problem in Vietnam and is actively engaged in the fight against TIP. The GVN understands the issue and its dimensions, appears committed to tackling the problem. The GVN's understanding and approach to combating TIP continues to evolve. This year the legal definition of trafficking was expanded to include men and the GVN's lead official on TIP, Deputy Prime Minister Trong, publically called on GVN officials to increase efforts to address labor trafficking (ref C). Prime Minister Nguyen Tan Dung also discussed labor trafficking during a January 2010 meeting with the heads of the International Labor Organization, the International Organization for Migration and the UN Office in Geneva. PM Dung noted that an important component of the GVN's policy on export labor was the GVN's effort to fight illegal migration, particularly human trafficking. Foreign governments, international organizations and NGOs were active

partners in combating TIP, and the GVN welcomes their support and works cooperatively with them (and the U.S.).

B. Lead Agencies and Interagency Cooperation

The GVN's National Steering Committee on anti-trafficking remained the government's key interagency coordinating body. The 2004 NPA established the NSC-130 and specified funding mechanisms for the 2004-2010 period. The NPA assigns specific roles to government agencies under the overall direction of the MPS, thus eliminating some of the confusion regarding overlapping jurisdictions. In addition to overall responsibility for coordinating GVN interagency efforts, MPS also has a separate investigative unit dedicated to anti-trafficking enforcement.

A brief description of additional main actors in the GVN anti-TIP effort follows:

-- The Ministry of Labor, Invalids and Social Affairs' (MOLISA) has responsibilities related to TIP, including: formulation and implementation of the NPA; providing protection and reintegration assistance for returnees (including services such as job training and victim shelters). The Department for Social Evils Prevention has a Prostitution Prevention Unit and an Anti-Trafficking Taskforce. The Department for Overseas Labor is responsible for monitoring labor export companies and export labor.

-- The Vietnam Women's Union (VWU) is responsible for awareness raising at the community level to prevent human trafficking. It is active in drawing attention to the problems of girls being trafficked for purposes of prostitution, domestic work or marriage. The Youth Union and the Committee for Population, Family and Children also have programs aimed at trafficking prevention and victim's protection, including publicity to warn of dangers, repatriation programs, and vocation training.

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-- The Ministry of Justice is currently drafting Vietnam's first comprehensive law on human trafficking, expected to go before the National Assembly in the fall of 2010.

-- The Border Guard Command, in coordination with the Ministry of Foreign Affairs, is responsible for receiving victims from foreign governments or self-returns. Both organizations verify the TIP victim's status and refer them to MOLISA for reintegration. The Border Guard typically act independently on TIP along Vietnam's land borders; the MFA becomes more involved in trafficking cases overseas.

Other GVN agencies involved in anti-TIP are the Supreme People's Court and the Supreme People's Procuracy. The Ministry of Finance and the Ministry of Planning and Investment play a role in the budget process. The Ministry of Culture, Sport and Tourism also participates in the NSC-130 as it plays a role in combating child sex tourism and tourist demand for commercial sex. Vietnam's legislature, the National Assembly, plays a key role in approving legislation and, to a degree, international cooperation. Each national level agency is assigned specific responsibilities under the NPA which are fulfilled at not only the national level, but the provincial and local levels as well.

C. Limitations and Challenges Faced by the GVN

Poor interagency cooperation at all levels of government, long and porous borders, inadequate law enforcement and legal infrastructure, and limited resources and capacity are the main challenges for the GVN. As a developing country with a 2009 annual per capita income of USD \$1,024, Vietnam has limited funds for all public programs, and the battle against TIP is no exception. Lack of funding and human resources was the challenge most often cited by local and international participants at an October 2009 workshop organized by the NPA and convened by DPM Trong. Limited resources affected all aspects of anti-trafficking programs: outreach, victim support, training, law enforcement, and even international

cooperation. NSC-130 has moved to ask the Prime Minister to upgrade NC130 to a National Targeted Program which would guarantee national funding for TIP programs (ref C and G).

There are indications the victim referral system created under Inter-ministerial Circular (03/2008) is improving, but the ability to address TIP varies greatly from one province to another, especially at the lower levels of local government. Local officials tell us coordination has improved, citing examples ranging from victim referral, to prosecutions, to outreach efforts. The decentralization of government authority in Vietnam allows for greater autonomy at the provincial level in theory, but in practice, because such decentralization does not come with a budget, many initiatives are "unfunded mandates" at the local level. Therefore, prevention, protection and reintegration efforts vary greatly from region to region as does the political will to combat trafficking. For further information, see 5.L.

Geography also hinders the GVN's anti-TIP efforts. Vietnam's land border with Cambodia, Laos and China is extremely rugged, porous and difficult to police. Smuggling of all kinds is a problem and physical interdiction of trafficking cases is particularly difficult. This is especially true in the Mekong Delta and along the mountainous northern border with China, where many informal border crossings take place via waterways and footpaths away from official border gates. In 2009, the Border Guard expanded efforts to monitor and track suspected cases. As a result, the unit identified an unprecedented 205 cases of suspected trafficking this year, which were then turned over to MPS for investigation and prosecution. 154 women and children were rescued by the Border

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Guard, while there were 131 returnee cases from neighboring governments (ref D). (The 131 cases do not indicate the actual number of individuals returned, as each individual case might have more than one returnee.)

Other challenges include a lack of standardized and comprehensive legislation and the limited ability of the national government to enforce implementation at the provincial, district and commune levels. Although Vietnam has a national legal framework to address trafficking, legal sanctions against trafficking are still scattered throughout the GVN Penal Code and can be subject to diverse interpretation, definitions and sentencing guidelines. A new, comprehensive anti-trafficking law is being drafted by the Ministry of Justice to reconcile the various laws and ensure full compliance with UN conventions.

1D. GVN Monitoring and Assessments

The NSC-130's Central Office is responsible for, among other things, helping prepare anti-TIP work plans, campaigns and projects, and investigating and evaluating their outcomes. NSC-130 is also responsible for disseminating the results of the GVN's anti-trafficking efforts, but the GVN does not have a formal mechanism for sharing TIP monitoring and evaluation information. In October 2009, MPS hosted a workshop to evaluate the GVN's implementation of its NPA on human trafficking. This event included representatives from 14 GVN ministries, INGOs, and representatives of the diplomatic community. Stakeholders assessed the current NPA, shared statistical data and discussed best practices and lessons learned. Additionally, media coverage of TIP issues continued to expand in 2009, including several media interviews of GVN officials discussing human trafficking, sharing statistical data and making assessments regarding current GVN efforts to combat trafficking. Coverage of TIP in Vietnam's state-run press continued to increase, an indication of the GVN's willingness to address this issue.

1E. Birth Registration, Citizenship and Nationality

According to the 2008 Law on Citizenship, children born to at least one Vietnamese citizen parent are automatically considered to be Vietnamese citizens; there are also provisions for children born to non-citizenship parents to acquire Vietnamese citizenship under certain circumstances. Foreign nationals may apply for Vietnamese citizenship provided that they meet certain criteria including either being a spouse, a biological parent/child of Vietnamese

citizens, or contributing to the development of Vietnam. The State President has authority to grant citizenship to foreigners. The 2008 legislation allows dual citizenship under some circumstances.

According to the Law on Residence 2006, Vietnamese citizens have the right to reside in Vietnamese territory. Registration is compulsory at birth though, in practice, not all children are registered immediately. A birth certificate is required for public services, such as education and health care. At the age of eighteen residents are eligible to apply for an identity card at the local police. Identity numbers are allocated geographically, and if someone moves they must re-register in their new locality and apply for a new identity card. Implementation varies widely, particularly in rural localities where the most vulnerable to TIP are born and reside.

Authorities keep track of citizen registration through a registration book, which is issued to each household.

Foreign passport holders must register to stay in private homes, although there were no known cases of local authorities refusing to allow foreign visitors to stay with friends and family. Citizens

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are also required to register with local police when they stay overnight in any location outside of their own homes, though in practice there is limited enforcement of this provision.

1F. GVN Data Gathering Capabilities

The GVN collects some TIP-related data, but with individual ministries responsible for information as it relates to their responsibilities, collection can be piecemeal. The Supreme People's Procuracy, for example, collects statistics on the arrest, prosecution and conviction of traffickers, while MOLISA counts trafficking victims receiving repatriation and reintegration assistance. Methods used to compile data vary by Ministry and level of government and is at times inconsistent.

One example shared by the IOM illustrates the point. Local-level police tend to report higher numbers of trafficked women from their community than do local branches of the Women's Union. This is because of differences in data collection. Police often rely on residency records to compile trafficking statistics. When there is an unaccounted absence, this is attributed to trafficking, when in reality many of the women have chosen to leave for a variety of reasons, including to find work in urban areas or industrial zones. By contrast, the Women's Union tends to underestimate trafficking as they primarily rely on the numbers of women who join their Women and Family Clubs (which include trafficked, at risk, and other vulnerable women) or trafficked women who are formally identified by the authorities. Because many trafficked women do not want to be identified as having been trafficked (the stigma and discrimination is high and the benefits of being identified are low), the Women's Union's figures are often lower than other reported estimates (ref E). The most reliable way to compile trafficking statistics in Vietnam tends to be through interviews with households, or later with the women themselves, but this is difficult to do on a large scale and in a manner that can be extrapolated beyond a specific locality.

Much of this is a reflection of capacity and resources, and the inability of Vietnam to coordinate and correlate its TIP data collection is indicative of the GVN's data collection efforts in other fields. However, there is some progress being made. MOLISA, for example, recently released the first in a series of labor market trend reports based on data from 1997 - 2007 as part of an EU-funded ILO project to collect, analyze and disseminate labor related data. Several NGOs have begun projects related to improving the data available concerning the trafficking situation in Vietnam. UNIAP has two ongoing projects funded by the USG. The first is a recently completed community-based survey on TIP, conducted in collaboration with An Giang University. The report's findings will be presented in a regional workshop on TIP statistics in Bangkok scheduled for March 2010. The second project will analyze returning immigration cases on the Vietnam-China border to determine what factors influence whether an individual becomes trafficked or experiences labor exploitation. A contractor is currently in the field to assess the best way to collect data (ref G).

14. (SBU) INVESTIGATION AND PROSECUTION OF TRAFFICKERS

1A. Existing Laws against TIP

Most traffickers in Vietnam are prosecuted under Articles 119 and 120 of Vietnam's Penal Code. Trafficking in persons is treated as a criminal offense; victims of trafficking, however, are not criminalized by the Penal Code. Article 119, as amended in June 2009, expands the definition of human trafficking to include men, criminalizes the trafficking of men, and allows men access to victim support services (ref B). Under Article 119, traffickers

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can be penalized with sentences ranging from five to twenty years in prison. Article 120 concerns trafficking in children and includes penalties ranging from three years to life in prison. Offenders may also be subject to a fine of up to \$2,000 dollars and probation or parole for one to five years.

International trafficking for the specific purpose of labor exploitation is covered under Penal Code 275 (entitled "organizing and/or coercing other persons to flee abroad or to stay abroad illegally"). Penalties for this crime range from two to twenty years in prison.

In 2009, government efforts to enact a comprehensive law on human trafficking progressed. The National Assembly issued a directive instructing the Ministry of Justice (MOJ) to submit a comprehensive TIP law for the Assembly's review in 2010. The United Nations Inter-Agency Project on Human Trafficking (UNIAP) is currently assisting MOJ to draft the new law, and according to the NSC-130, a draft will be submitted to the Assembly in the fall of 2010 (ref B). The GVN will also submit to the National Assembly for consideration the ratification of the United Nations Convention against Transnational Organized Crime (UNTOC), together with its Protocol on Human Trafficking, in 2010.

The GVN has several laws, resolutions, national programs and plans of action to protect children. The Law on Protection, Care and Education of Children, issued in 1991, prohibits all acts of cruel treatment, humiliation, abduction, sale and coercion of children into activities harmful to their healthy development. The 1999 Penal Code criminalizes all acts of sale, fraudulent exchange or control of children. Articles 254, 255 and 256 specifically prohibit acts related to child prostitution including harboring prostitution, brokering prostitution, and buying sex with minors. The Penal Code also criminalizes forced child labor. Any person convicted of buying, selling, fraudulently exchanging or appropriating a child for the purpose of prostitution faces a prison term ranging from 10 to 20 years or to life imprisonment or probation from 1 to 5 years. In addition, the offender could be fined up to \$2,000 and banned from certain commercial activities or positions from 1 to 5 years.

According to NSC-130 officials, there are several new crimes for which Vietnam does not yet have specific laws, including the solicitation of children via the Internet, online child pornography and the use of webcams for online sex. However, these crimes can be prosecuted using existing articles of the Penal Code.

In 2006, the Prime Minister's Decree 69 amended the Law on Marriages "having a foreign factor," requiring the Vietnamese spouse to interview with local authorities within 50 days of marriage to ensure that the marriage is voluntary, that there are sufficient language skills for basic communication and that each participant understands each other's family situation. The Decree also restricts large gaps in age between marrying parties. In July 2009, the government introduced additional regulations to further prevent fraud in foreign marriages (ref B).

Vietnamese laws regulating export labor have expanded to address more comprehensively and explicitly issues faced by Vietnamese workers overseas. The Vietnamese Labor Code, first issued in 1994

and updated in 2002, 2006, and 2007, contains a section entitled "Vietnamese working abroad." Contracting enterprises must have a permit issued by Ministry of Labor, Invalids and Social Affairs (MOLISA) to send workers abroad. The Code details the rights and obligations of both workers and enterprises, and includes provisions requiring all enterprises "to manage and protect the interests of laborers during the period of working abroad under their contracts in accordance with the law of Vietnam and the law of the foreign country;" "to pay compensation for damage to the laborer caused by the breach of the contract by the enterprise;"

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and, "to complain to the authorized State body against breaches of the laws in the field of labor export."

A decree issued in 2003 provides the legal mechanism to implement the Labor Code and requires companies "monitor, manage and protect the legal rights of labor during their time of working abroad." Companies must routinely inspect foreign workplaces both before and after signing labor contracts. Information from these inspections must be included in the registration of the labor export contract submitted to MOLISA. The 2003 Decree also lays out the conditions for granting and revoking licenses for labor export. MOLISA reviews current licenses and new applications and can deny applications by companies that do not meet the stipulated conditions. If serious abuses of worker's rights occur, MOLISA can coordinate with MPS to prosecute violators under criminal statutes. MOLISA and MPS jointly issued an interagency circular in January 2005 that defined the roles and responsibilities of labor export companies as well as police and labor agencies at all levels of government. The circular outlines regulations and responsibilities and details labor violations that can result in administrative sanctions or criminal prosecution.

The Prime Minister's Decree 141, issued in November 2005, requires labor export companies to guarantee overseas contracts and resolve problems in which "laborers have accidents, risk accidents or occupational diseases or their dignity or honor is infringed upon." In turn, laborers are required to respect the terms of labor contracts. The Decree anticipates that labor export companies in Vietnam, with the cooperation and assistance of the GVN, will be able to resolve disputes between laborers and overseas employers. It does not, however, give laborers the right to break a labor contract.

Vietnam's law "On Vietnamese Labor Working Abroad by Contract," put into effect in July 2007, superseded Decree 141 and further regulates enterprises and protects workers participating in Vietnam's labor export industry. The related legal instruments that fall under this umbrella law regulate everything from labor recruitment and pre-departure fees to contract transparency, the settlement of disputes and licensing of labor brokerages.

In 2008, two additional documents were enacted to broaden implementation of the 2007 Export Labor Law: 1) Circular No. 11 on the management of the labor export assistance fund; and, 2) Decision No. 61/2008 on the brokerage fees for labor export which provides stricter caps on the fees labor brokerages can legally charge workers.

Palmer